203 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

Civil Revision No.284 of 2006 (O&M)
Date of Decision : September 27, 2013

Phool Chand

..... Petitioner

Versus

State Bank of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE L.N. MITTAL

Present: Mr. Manjit Singh, Advocate for the petitioner.

Mr. Ashok Gupta, Advocate for respondent No.1.

Mr. M.K. Garg, Advocate for respondent Nos.2 to 9.

*****

L.N. MITTAL, J. (ORAL)

Phool Chand-respondent No.8 before the lower Appellate Court has filed this revision petition under Article 227 of the Constitution of India challenging order dated 08.10.2005 passed by the lower Appellate Court, thereby allowing application filed by respondent No.1-plaintiff-State Bank of India (appellant before the lower appellate court) for amendment of plaint as well as for additional evidence.

Plaintiff alleged in its application that fraud committed by defendant No.1-Desh Raj Chawla, an employee of the Bank (since deceased and represented by legal heirs) came to notice of the Bank on 27.05.1991 but it was wrongly mentioned in the plaint that the said fraud came to the notice of the Bank on 15.04.1991. Accordingly,

Rani Sarita
2013.09.30 10:23
I attest to the accuracy and
integrity of this document
Chandigarh

correction in the said date was sought by amendment of plaint.

As regards additional evidence, it was alleged that Des Raj Chawla had made admission of the fraud by making statement on 20.04.1991 before the investigating authorities. The said confession made by Des Raj Chawla regarding commission of fraud was earlier not in the knowledge of he plaintiff-Bank. The same is sought to be proved by examining attesting witnesses thereof. It was also alleged that during pendency of the suit, Vijay Kumar, one of the sons and legal heirs of defendant No.1-Des Raj Chawla since deceased, gave an affidavit dated 09.05.1997 undertaking to pay the outstanding amount with interest, which was due from his father defendant No.1-Des Raj Chawla. Vijay Kumar deposited the said amount. Vouchers regarding deposit thereof are also sought to be proved by additional evidence.

I have heard learned counsel for the parties and perused the case file.

Counsel for the petitioner contended that amendment of plaint could not be allowed at appellate stage because amendment of pleading cannot be allowed after commencement of trial unless the party seeking amendment could not have raised the matter before commencement of trial in spite of due diligence. The contention cannot be accepted because amended provision of Order VI, Rule 17 of the Code of Civil Procedure (in short, CPC), drastically curtailing the right of a party to seek amendment of pleading after commencement of trial, as contended by the counsel

Rani Sarita
2013.09.30 10:23
I attest to the accuracy and
integrity of this document
Chandigarh

for the petitioner, came into existence in the year 2002 by amendment and the said provision as it now exists is not applicable to the instant case because the suit in this case had been instituted on 29.04.1994 i.e. long before the aforesaid amended provision of CPC came into existence. Before the said amended provision came into existence, law of amendment of pleadings was liberal. In the instant case, only date of knowledge of the commission of fraud is sought to be corrected by amendment of plaint. Even after the said amendment, plaintiff has to prove the amended plea. Consequently, amendment of plaint has been rightly allowed by the lower Appellate Court.

As regards additional evidence, the same consists of documents which are old and are prima facie not likely to be fabricated. On the other hand, the suit is by Bank and, therefore, no official of the Bank has any personal interest in the case so as to fabricate the documents. Consequently, proposed additional evidence, which is essential for proper and effective decision of the appeal, has also been rightly allowed by the lower Appellate Court.

In the aforesaid context, it has to be noticed that the petitioner, who is respondent No.8 in the lower Appellate Court, is mentioned to be ex parte in the lower Appellate Court in the impugned order. He did not even contest the application filed in the lower Appellate Court by respondent No.1 herein.

For the reasons aforesaid, I find that there is no perversity, illegality or jurisdictional error in the impugned order of the

Rani Sarita
2013.09.30 10:23
I attest to the accuracy and
integrity of this document
Chandigarh

lower Appellate Court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition lacks any merit and is accordingly dismissed.

Pending civil miscellaneous applications are disposed of as infructuous.

September 27, 2013 **(L.N.MITTAL)**
sarita **JUDGE**

Rani Sarita
2013.09.30 10:23
I attest to the accuracy and
integrity of this document
Chandigarh